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Rights of indigenous peoples

Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, submitted in accordance with Human Rights Council resolution 33/12.

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Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples

Summary

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 33/12. It provides a brief summary of her activities since her previous report and an assessment, informed by experiences of her mandate, on the status of implementation of the United Nations Declaration on the Rights of Indigenous Peoples for the occasion of its tenth anniversary.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 33/12. In the report, she provides a brief summary of her activities since her previous report (A/71/229) and an assessment, informed by experiences of her mandate, on the status of implementation of the United Nations Declaration on the Rights of Indigenous Peoples on the occasion of its tenth anniversary.

II. Activities of the Special Rapporteur

2. As part of her mandate from the Human Rights Council, the Special Rapporteur undertakes four interrelated areas of work, namely, country visits; thematic studies; promotion of good practices; and communications to Governments on alleged cases of human rights violations.

3. Since she submitted her last report to the General Assembly, the Special Rapporteur has carried out two official country visits: to the United States of America in February 2017 and to Australia in March/April 2017. The reports on those visits (A/HRC/36/46/Add.1 and A/HRC/36/46/Add.2) will be submitted to the Human Rights Council in September 2017, together with a thematic report on climate change funds (A/HRC/36/46).

4. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates on the rights of indigenous peoples, the Special Rapporteur participates in the annual meetings of the Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples.

III. Implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the work of the Special Rapporteur on the rights of indigenous peoples

5. The General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 (resolution 61/295). The mandate of the Special Rapporteur on the rights of indigenous peoples was extended to include the task of promoting the Declaration within weeks of its adoption in 2007.[1]

6. On 22 and 23 September 2014, United Nations Member States held a high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the Declaration. The conclusions of the meeting, reflected in its outcome document,[2] reiterate the commitment of the United Nations system and its Member States towards achieving the ends of the Declaration.

7. In this report, the Special Rapporteur provides some views on the status of implementation of the Declaration, based on the situations observed in country

[1] Mandate established by the Commission on Human Rights in 2001 by its resolution 2001/57. The Human Rights Council by its resolution 6/12 extended the mandate in 2007, adding the task of promoting the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate.

[2] Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (General Assembly resolution 69/2).

visits, allegations received by the mandate holder, independent research, and exchanges maintained with States, indigenous peoples and others during the past decade. At the end, some recommendations are presented on necessary steps and areas that require special attention to ensure that indigenous peoples enjoy the rights recognized in the Declaration and relevant international human rights instruments. The Special Rapporteur provides examples and references for the work developed by the mandate holder to support this aim.

IV. Legal status and aims of the Declaration

8. Although the present report will focus on implementation, the Special Rapporteur would like to reiterate some comments on the legal standing of the Declaration and on the universal human rights principles underlying it. The Declaration sets a clear normative framework for the mandate.[3]

9. The Declaration, as a declaration of the General Assembly, is a standard-setting resolution of profound significance as it reflects a wide consensus at the global level on the minimum content of the rights of indigenous peoples.[4] Many of its articles are an extension of binding standards found in various human rights treaties that have been widely ratified and certain provisions, such as those relating to the protection against racial discrimination, reflect customary international law.

10. The preamble to the Declaration underlines fundamental aims and principles which should guide its interpretation and implementation: the need to overcome and repair the historical denial of the fundamental human rights of indigenous peoples, and the affirmation of the equality of indigenous peoples and individuals to all other peoples and individuals, paired with their right to be different. The Declaration itself can be considered a remedial tool.

11. True reconciliation requires affirmative steps to provide remedy and redress for indigenous peoples. As stated in the Declaration, this is required inter alia for the dispossession of their land, territories and resources, for any form of forced assimilation or integration, for taking cultural, intellectual, religious or spiritual property, for the deprivation of their means of subsistence as well as for the development and for the utilization or exploitation of their mineral, water or other resources.[5] An essential approach for redress in these processes is the consideration of the collective nature of the impact of such violations and therefore the incorporation of adequate collective reparation measures. Without definite measures of remedy, reconciliation cannot be achieved.

12. Furthermore, the Declaration is an instrument aimed at ending the pervasive racism and discrimination still suffered by indigenous peoples in the enjoyment of their human rights. Racism and discrimination are prevalent mindsets and attitudes that prevent the establishment of equal relationships between indigenous peoples and States, and with the society at large.

13. In this regard, the view that the implementation of the rights enshrined in the Declaration amounts to bestowing unjustified privileges on a certain group is a

[3] See A/HRC/9/9 and A/HRC/27/52.

[4] See A/68/317.

[5] United Nations Declaration on the Rights of Indigenous Peoples, articles 8, 11, 20 and 28. The normative interpretation and jurisprudence of human rights treaty bodies and the regional human rights systems provide solid guidance on effective redress measures. See also the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, 2005).

serious concern. This view was held by some States after the adoption of the Declaration and, unfortunately, it has been since reiterated by other actors, including international financial institutions, in the framework of discussions on safeguards to ensure respect for the rights of indigenous peoples. This erroneous interpretation has also been expressed with regard to the special measures required to overcome centuries of racism and discrimination.

14. Human rights treaty bodies have specifically addressed the need for special measures when referring to indigenous peoples within the context of monitoring compliance with their respective human rights treaties. The Committee on the Elimination of Racial Discrimination has noted that "the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination."[6] It has furthermore noted that "States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities".[7]

15. Challenges remain regarding the interpretation of the content of the rights enshrined in the Declaration.[8] Differences in interpretation continue to exist especially in relation to rights to lands and resources; the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples in matters that affect them; and the harmonization of State and customary indigenous governance and justice systems.

16. In this sense, the work of the mandate holder has sought to clarify standards contained in the Declaration, and other relevant existing human rights instruments, both in general and in specific contexts. For instance, after the adoption of the Guiding Principles on Business and Human Rights, the previous Special Rapporteur analysed how indigenous peoples' rights should be interpreted and implemented in the context of business activities affecting them, both in relation to State duties and companies' responsibilities,[9] and developed further in-depth work on the issue focused on the activities of extractive industries.[10] The current Special Rapporteur has provided interpretations of standards in relation to economic, social and cultural rights and sustainable development[11] and to investment agreements,[12] as well as analyses of conservation activities[13] and climate change measures.[14]

17. The interpretative work of the mandate holder, the growing jurisprudence emanating from United Nations human rights bodies and regional human rights systems, including regional human rights courts, together with an intercultural dialogue between States and indigenous peoples, can significantly assist in strengthening the understanding and implementation of the rights contained in the Declaration.

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[6] Committee on the Elimination of Racial Discrimination, general recommendation No. 23.

[7] Committee on the Elimination of Racial Discrimination, general recommendation No. 32.

[8] See A/HRC/27/52 (2014), para. 23; and A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

[9] See A/HRC/15/37 (2010).

[10] See A/HRC/18/35 (2011); A/HRC/21/47 (2012); and A/HRC/24/41 (2013).

[11] See A/69/267 (2014).

[12] See A/70/301 (2015); and A/HRC/33/42 (2016).

[13] See A/71/229 (2016).

[14] See A/HRC/36/46 (2017).

V. Assessing progress in implementation

18. Ten years after its adoption, the legal status and aims of the Declaration are now better understood and accepted by Member States and others. The four countries that voted against the Declaration have now reversed their position, and some of the countries that abstained have also made public statements of support. Moreover, States reaffirmed their commitment to take measures to achieve the ends of the Declaration in consultation and cooperation with indigenous peoples at the World Conference on Indigenous Peoples in 2014.[15]

19. Nevertheless, considering the problems witnessed and the information and allegations received, the Special Rapporteur assesses the situation of implementation of the Declaration as one of limited progress. This is particularly worrisome considering the urgency and seriousness of the threats indigenous peoples are facing in many countries, compromising not only their dignity and well-being but their very survival as distinct peoples.

20. Measuring the effective implementation of the Declaration presents important challenges. It is difficult to assess the performance of adopted laws or policies in terms of their contribution to implementing the aims of the Declaration, owing in part to lack of disaggregated data and adequate indicators that are significant in terms of indigenous peoples' rights.[16]

21. The Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council undertook a survey of implementation through questionnaires addressed to Member States and indigenous peoples in 2014. In the report summarizing their replies on best practices regarding measures and implementation strategies to attain the goals of the Declaration it is pointed out that the information provided only allowed for a limited assessment of its implementation.[17]

22. The effective implementation of the rights of indigenous peoples requires States to develop an ambitious programme of reforms at all levels to remedy past and current injustices. This should involve all the branches of the State, including the executive, legislative and judiciary, and implies a combination of political will, legal reform, technical capacity and financial commitment.[18] Implementation of the Declaration should be measured against compliance with these requirements, and not on the basis of rhetorical claims of commitment or isolated measures. Moreover, implementation of the Declaration cannot happen without the full and effective participation of indigenous peoples at all levels of decision making.

23. It must be mentioned that the implementation of the Declaration in Asia and Africa, and the work of the mandate holder to promote it, face particular obstacles due to denial by some States of the existence of indigenous peoples within their borders, on the grounds for example that all the population is indigenous to the country. The mandate holder has repeatedly referred to this issue stating that, despite the different terminology employed in many areas, the situation and human rights issues of certain peoples in those regions is a matter of concern for the mandate holder and the provisions of the Declaration apply to them.[19] These populations are

[15] General Assembly resolution 69/2, para. 7.

[16] See A/HRC/27/52 (2014); and A/69/267 (2014).

[17] A/HRC/EMRIP/2014/4.

[18] See A/64/338 (2009).

[19] See A/HRC/27/52 (2014); A/HRC/12/34/Add.3 (mission report of the Special Rapporteur on Nepal, 2009); A/HRC/24/41/Add 3 (report of the Special Rapporteur on the consultation on the situation of indigenous peoples in Asia, 2013); A/HRC/15/37/Add.2 (mission report of the Special Rapporteur on Botswana, 2010); and A/HRC/18/35/Add.5 (mission report of the Special Rapporteur on the Republic of the Congo, 2011).

distinct peoples, with specific cultures and relation to certain lands and territories, and have been subject to marginalization. The problems they suffer, related to their group identity, are similar to those of peoples all over the world that identify as indigenous, and are the types of problems that the Declaration seeks to resolve as a remedial instrument. The work of the African Commission on Human and Peoples' Rights, particularly its Working Group on indigenous populations/communities, has been instrumental in advancing a positive dialogue on the recognition of indigenous peoples in the African region.[20]

24. The sections that follow contain comments on progress made and challenges remaining within three key spheres that the mandate holder has had the opportunity of assessing in country missions, working visits, exchanges with State representatives, indigenous peoples and others, and through communications work, namely, the development of an adequate legal framework, the adoption and implementation of enabling public policies and the establishment of adequate institutional arrangements.[21]

VI. Necessary legal reforms

25. The existence of an adequate legal framework, consistent with international human rights standards, particularly the Declaration, is not per se a guarantee of implementation, but is an important step to establishing a solid basis to build the necessary changes. As noted by my predecessors, even in countries with well-developed enabling legal frameworks on the rights of indigenous peoples, there may be "implementation gaps" that impede effective actions.[22]

26. The legal framework may consist of a combination of constitutional recognition and specific legal instruments devoted to the rights of indigenous peoples in general or on different sectoral issues. In some countries, such as Canada, New Zealand and the United States of America, treaties were signed between indigenous peoples and States which provide a legal basis for domestic recognition of indigenous peoples' rights.[23] There is an ongoing discussion of the possibility of development of a treaty in Australia.[24] There are also different kinds of agreements

[20] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005).

[21] Since 2007, mandate holders have made official visits to Brazil (2008, 2016), Nepal (2008), Australia (2009, 2017), Botswana (2009), Colombia (2009), the Russian Federation (2009), Guatemala (2010), New Zealand (2010), the Republic of the Congo (2010), the Sápmi region in Norway, Sweden and Finland (2010, 2015), Argentina (2011), New Caledonia, France (2011), El Salvador (2012), Namibia (2012), the United States of America (2012, 2017), Canada (2013), Panama (2013), Peru (2013), Paraguay (2014) and Honduras (2015); and working visits, among others, to Ecuador (2008, 2009), Chile (2009), Panama (2009), Peru (2009), Costa Rica (2011), Suriname (2011) and Honduras (2015), in addition to attending numerous meetings and events in different countries by invitation of Government authorities, the United Nations system, academia, indigenous peoples and civil society organizations. All official country mission reports of mandate holders are available from www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx.

[22] See A/HRC/9/9 (2008); and E/CN.4/2006/78.

[23] See A/HRC/18/35/Add.4 (mission report of the Special Rapporteur on New Zealand (2011), analysing the settlement procedure for the Treaty of Waitangi); A/HRC/27/52/Add.2 (mission report of the Special Rapporteur on Canada (2014), on new agreements and treaty settlements); and A/HRC/21/47/Add.1 (mission report of the Special Rapporteur on the United States of America (2012), section on broken treaties).

[24] See A/HRC/36/46/Add.2 (mission report of the Special Rapporteur on Australia (2017), on the outcome of a referendum consultation indicating preference for a treaty).

between indigenous peoples and the State in certain countries. As stated in the Declaration, treaties, agreements and other arrangements between States and indigenous peoples are the basis for a strengthened partnership between indigenous peoples and States and should be honoured and respected.[25]

27. If the Constitution, as the foundational law, recognizes the existence and rights of indigenous peoples, then this reflects a commitment of the whole society within the country. A number of countries recognize the existence and certain rights of indigenous peoples within their Constitution.[26] While most of these recognitions predate the adoption of the Declaration, examples after 2007 include the Constitutions of Ecuador (2008), Bolivia (2009), Kenya (2010),[27] Sweden (2011)[28] and El Salvador (2014). Some countries have amended their Constitutions to at least recognize the multi-ethnic, pluricultural nature of their societies (Costa Rica, 2015).

28. Discussions on recognition of indigenous peoples and their rights in the Constitution are ongoing and at the federal level in Australia, Chile and Guatemala.[29] In February 2017, the Special Rapporteur together with other special procedures mandate holders wrote to the Government of Guatemala urging it, in the context of the ongoing parliamentary debate, to support amendments to the Constitution which would recognize the indigenous justice system.[30]

29. Within the Commonwealth of Australia, each of the six States already have Constitutions that recognize Aboriginal peoples and the Queensland Constitution specifically recognizes Torres Strait Islander peoples as well.[31] The Constitution of Mexico City, adopted in February 2017, refers to the rights of indigenous peoples within an urban setting, explicitly mentions the Declaration and adopts it as its legal framework.[32]

30. Some countries have enacted general laws on the rights of indigenous peoples. Most of the instances also predate the Declaration, and should be reviewed

[25] United Nations Declaration on the Rights of Indigenous Peoples, preamble and article 37. New agreements and constructive arrangements include, for instance, the 1995 Acuerdo sobre identidad y derechos de los pueblos indígenas as part of the peace agreements between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca; the 1996 Acuerdos de San Andrés sobre derechos y cultura indígena between the Government of Mexico and the Ejército Zapatista de Liberación Nacional; or the 1997 Chittagong Hills Tract Accord between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti, whose implementation has been followed by the mandate holder.

[26] That is the case with many Latin American Constitutions (Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela (Bolivarian Republic of)). Further examples include Canada, Finland, Norway, the Russian Federation and Sweden. The Constitution of the Philippines recognizes indigenous cultural communities. The Federal Constitution of Malaysia incorporates special provisions for the natives of Sabah and Sarawak, including recognition of native customary law. The Constitution of India recognizes scheduled tribes and tribal councils. The Indonesian Constitution recognizes traditional communities (article 18 B (2)).

[27] The 2010 Constitution of Kenya, while not using the term indigenous peoples, defines "marginalized communities" in positive language, and includes articles on their language and culture, representation, dual citizenship for peoples in cross-border situation, such as the Maasai, affirmative action measures, governance, communal land recognition and avenues for redress of historical injustices.

[28] See A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

[29] See A/HRC/12/34/Add.6 (mission report of the Special Rapporteur on Chile, 2009).

[30] Special procedures joint communication (OL GTM 1/2017), available from https://spcommreports.ohchr.org.

[31] See A/HRC/36/46/Add.2 (mission report of the Special Rapporteur on Australia, 2017).

[32] See www.cdmx.gob.mx/storage/app/uploads/public/589/746/ef5/589746ef5f8cc447475176.pdf.

according to its standards,[33] but encouraging new legislation has since been adopted. In October 2007, the Senate of Bolivia sanctioned a bill transposing the Declaration within the Bolivian legal system,[34] making it a law directly applicable by all national courts. Law number 5 of 25 February 2011 on the protection and promotion of the rights of indigenous populations in the Congo constitutes a good practice in this regard within the African region.[35]

31. Certain countries have developed sectoral laws on specific indigenous peoples' rights, such as in the fields of language, health and education, or established processes for participation or land rights recognition. The elaboration of legislation to operationalize the State duty to consult indigenous peoples is an ongoing process in Latin America. Peru adopted a law to this effect[36] and discussions on potential new legal instruments are taking place, for instance, in Colombia, Costa Rica, Guatemala and Honduras. Legislation addressing indigenous peoples in particular circumstances, such as isolated indigenous peoples and indigenous peoples in recent contact has also been developed in Bolivia, Ecuador and Peru.[37] General sectoral laws in some countries consider specific measures related to indigenous peoples.[38] Dialogue processes for the development of new legislation are taking place in several countries, including transnational instruments as the Nordic Sami Convention.[39]

32. Furthermore, Nepal (2007), Spain (2007), Chile (2008), the Central African Republic (2010) and Nicaragua (2010) have ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) during the past decade.

33. The recognition of the pre-existing rights of indigenous peoples in the legal system of a country is generally a constructive step, particularly when it responds to the demands of indigenous peoples and is conducted in cooperation with them and with their full and effective participation. The mandate holder has consistently recalled that such recognition should be accompanied by a necessary review of all domestic legislation to ensure coherence with international human rights standards on the rights of indigenous peoples, particularly the Declaration. In some countries

[33] See, for example, Philippines, Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371); Nepal, National Foundation for the Development of Indigenous Nationalities Act of 2002 (NFDIN Act); and India, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006.

[34] Law No. 3760, of 7 November 2007, which introduced the 46 articles of the United Nations Declaration on the Rights of Indigenous Peoples into the legislation of Bolivia.

[35] See A/HRC/18/35/Add.5 (mission report of the Special Rapporteur on the Republic of the Congo, 2011).

[36] Law No. 29785 on the right to prior consultation of indigenous peoples, recognized in Convention No. 169 of the International Labour Organization (ILO), and Supreme Decree No. 001-2012-MC.

[37] Political Constitution of Ecuador, 2008, article 57; Constitution of the Plurinational State of Bolivia, 2009, articles 30 and 31; Law reforming the Penal Code of Ecuador, including the crimes of genocide and ethnocide, 9 March 2009 (articles 138, 216 and 353 bis); Law No. 28736 for the protection of indigenous peoples in isolation and recent contact in Peru, 2006, and Supreme Decree No. 008-2007 (regulation); Law for the protection of highly vulnerable indigenous nations and peoples in Bolivia (2013). See also the presentation by the Special Rapporteur, "Pueblos indígenas en aislamiento en el marco de los estándares internacionales de derechos humanos", 22 November 2016, available from http://unsr.vtaulicorpuz.org/site/images/docs/special/2016-11-22-unsr-intervencion-ecuador-pueblos-en-aislamiento.pdf.

[38] Communication of the Special Rapporteur on the Cambodian Land Law (2001) regarding communal land rights (see A/HRC/12/34/Add.1, 2009); communication of the Special Rapporteur on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 of India (IND 9/2013).

[39] See A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

where legislation recognizing the rights of indigenous peoples has been adopted, there are glaring inconsistencies between such legislation and existing regulations concerning investments, extractive activities such as mining, infrastructure development, forestry, agriculture or conservation measures.[40]

34. During the past decade, the mandate holder has responded to requests by State officials and indigenous peoples to provide assistance in the development of constitutional and legal reforms to harmonize the domestic legal frameworks with the applicable international standards on the rights of indigenous peoples. Regarding constitutional reforms, the mandate holder has provided advice in the cases of Ecuador and Chile.[41] Regarding the regulation of the State duty to consult, the mandate holder has provided interpretative comments on the nature of this duty, and specific observations at the request of Governments on the development and contents of related legal instruments. Technical advice has also been provided regarding the legal recognition of indigenous justice systems and their articulation with ordinary justice, and on legislation to protect indigenous lands.

35. A positive trend has developed during the past 10 years with the use of the Declaration as a source of law in regional and national courts.[42] Gradually, the Declaration is being incorporated into jurisprudence and cited as an authoritative legal source in the interpretation of the content of indigenous rights. Some Constitutional and Supreme Courts have also explicitly recognized the Declaration in developing jurisprudence at the domestic level.[43]

36. Particularly significant are the developments in the Inter-American and African human rights systems. The mandate holder has consistently collaborated with these regional systems, including as expert witness at the request of the Inter-American Court of Human Rights.[44]

VII. Translation into effective policies

37. An important element for operationalizing the recognition of the human rights of indigenous peoples is the adoption of adequate public policies. Both before and after the adoption of the Declaration, public policies addressing indigenous peoples were adopted in several countries. The mandate holder has had the opportunity to receive information on these issues during the country visits, has identified best

[40] Comments of the mandate holder can be found in the mission reports on visits to, for example, Argentina; Colombia; Guatemala; New Zealand; and the Sápmi region. See also A/70/301; A/HRC/33/42; and A/71/229.

[41] See A/HRC/9/9/Add.1 and A/HRC/15/37/Add.7 on Ecuador; and A/HRC/12/34/Add.6 on Chile.

[42] The Inter-American human rights system has interpreted the American Convention and the American Declaration in the light of ILO Convention No. 169 and, since 2007, of the Declaration. See Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, judgment of 25 November 2015, and a compilation of relevant jurisprudence, available from www.corteidh.or.cr/sitios/libros/todos/docs/indigenas.pdf. On indigenous rights in the African human rights system, see *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010; and *African Commission on Human and Peoples' Rights v. Republic of Kenya* (the Ogiek peoples), application No. 006/2012, judgment of 26 May 2017.

[43] Constitutional Court of Colombia, judgement T-129/11 (2011). The Supreme Court of Belize applied the Declaration in the case of the Maya people of Belize already in 2007. Further overview of jurisprudence citing the Declaration is available in the report of the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/36/56, 2017).

[44] For examples of mandate holder cooperation with the Inter-American system, see A/65/264, para. 8; A/66/288, para. 26; A/68/317, paras. 53-54; and A/HRC/12/34, para. 16. The mandate holder has attended sessions of the African Commission on Human and Peoples' Rights.

practices and has made country-specific recommendations. The respective Special Rapporteurs have expressed their concerns over the lack of access by indigenous peoples to appropriate basic public services as well as the distressing disparities between the overall social and economic condition of indigenous peoples and that of the non-indigenous population in both developing and developed countries.[45]

38. Adequate policies must meet two basic criteria: they should conform to the international human rights standards on indigenous peoples; and they should be developed in cooperation with them and with their full participation, with the aim of strengthening their self-determination.[46] This may require a reinterpretation of the concept of development in the light of the Declaration, ensuring that the agency of indigenous peoples as development actors is recognized in the reconceptualization of the issues classically addressed by public policies such as economic development, health or education. Public policies that do not conform with international human rights standards on the rights of indigenous peoples are likely to further violate those rights.

39. Within this context, it is essential to consider the link between poverty, in all its dimensions, and the violation of the right to self-determination. It is also essential to consider the centrality of the rights of indigenous peoples to their lands, territories and resources to ensuring their enjoyment of all their human rights. In this sense, it must be stressed that there has been more progress in the adoption of measures related to certain social and cultural rights than in those concerning effective recognition and respect of indigenous peoples' rights to self-government and to their lands, territories and natural resources.

40. Public policies should address the underlying causes of poverty and marginalization that indigenous peoples suffer as a result of the denial of their rights. They should also be considered as elements of the coordinated and systematic action States should develop to ensure that indigenous peoples enjoy their collective and individual human rights, and not as marginal, stand-alone initiatives dependent on available funding. The mandate holder has observed positive examples of public policies to implement indigenous rights on different sectoral issues, such as for example the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 which affirms that it adopts a human rights-based approach informed by the Declaration.[47] Other examples include the Whanau Ora policy in New Zealand; the bilingual intercultural education programme in Panama and the policies for the protection of indigenous peoples in isolation and recent contact in Bolivia and Ecuador. In El Salvador the recently adopted national policy on indigenous peoples considers the Declaration as its framework. Canada is undertaking a review of its policies to ensure coherence with the Declaration, and dialogue processes with indigenous peoples on public policies are ongoing in Costa Rica or Paraguay.

41. There is a continuous need to review policies and align them with the Declaration. The commitment made at the World Conference on Indigenous Peoples by Member States to develop and implement, in cooperation with indigenous peoples, national action plans, strategies and other measures to achieve the ends of the Declaration[48] provides an opportunity to reverse the current situation and

[45] See for example mission reports of the Special Rapporteur on visits to Colombia (2009); Nepal (2009); Australia (2010, 2017); the Republic of the Congo (2011); New Zealand (2011); the United States of America (2012); and Canada (2014).

[46] See A/HRC/27/52; and A/65/264.

[47] See www.health.gov.au/internet/publications/publishing.nsf/Content/oatsih-healthplan-toc~framework.

[48] General Assembly resolution 69/2, paras. 7 and 8.

develop adequate public policies to comply with this commitment. For some countries, the role of the donor community in this regard is important. Cooperation and aid should explicitly conform to the Declaration as the standard to be applied in the activities supported in relation to indigenous peoples. Several States have developed guidelines and other instruments framing their aid and cooperation activities within the Declaration, such as Australia, Denmark, Germany, Spain and Switzerland.

42. In line with the Declaration, the mandate holder has consistently underlined the key right of indigenous peoples to decide their own development path, and to maintain their own systems and institutions, including in the fields of economic activities, education, health and activities related to multilateral environmental agreements.[49] Therefore, priority should be given to supporting indigenous peoples' own initiatives.

43. While there are some good practices of indigenous-led initiatives supported by States, it remains a serious concern that certain traditional livelihoods and indigenous economic practices are still disregarded and marginalized in many countries, in disregard of article 20 of the Declaration. This is the case with traditional pastoralism in eastern Africa, hunting and gathering, traditional agricultural practices such as shifting cultivation in South-East Asia, small-scale traditional fishing in many coastal areas, or reindeer-herding in the Arctic. Moreover, the contributions of these indigenous livelihoods and economic activities to the general economy are not adequately valuated and taken into account. The right of indigenous peoples to continue practising their traditional livelihoods is often violated in contrast with the protection of the rights and claims of those dominating the national economy.

VIII. Institutional framework

44. Many countries have established national institutions devoted to indigenous peoples in order to implement relevant legislation and policies, including in the countries visited by the mandate holder during the past decade. In spite of the commitment by staff, and the constructive and proactive role these institutions could play, many have a low rank among State institutions and are underresourced. Thus, the capacities of these bodies to perform an effective role in the protection and implementation of the fundamental rights of indigenous peoples are severely limited.[50] Some of these institutions incorporate indigenous staff and have developed good participatory mechanisms for indigenous peoples but, in other cases, there is no participation of indigenous peoples at all, or the mechanisms in place to facilitate such participation are not adequate.

45. The establishment of special departments within different Ministries focused on indigenous peoples and parliamentary commissions on indigenous issues can be instrumental in the development of appropriate measures to achieve the ends of the Declaration. Within the justice system, some countries have established specialized Public Prosecutor's Offices which play an important role in trying to ensure access

[49] See for example mission reports of the Special Rapporteur on the Republic of the Congo (2011); Namibia (2013); Paraguay (2015) and the Sápmi region (2016). On State control of indigenous economic activities for environmental reasons see, for example, the communications sent by the Special Rapporteur to the Russian Federation (see A/HRC/27/52/Add.4) and Ethiopia (see A/HRC/9/9/Add.1).

[50] Examples include Fundação Nacional do Índio (FUNAI) in Brazil; Instituto Paraguayo del Indígena (INDI) in Paraguay; Department of Indigenous and Afro-Honduran Peoples in Honduras; and Instituto Nacional de Asuntos Indígenas (INAI) in Argentina.

to justice for indigenous peoples.[51] In several countries joint bodies, such as dialogue round tables, with participation of indigenous peoples and State institutions, have been created: they either deal with specific matters[52] or exist as permanent mechanisms.[53] Provided they comply with the basic requirements of full and effective participation by indigenous peoples in decision-making and respect for indigenous appointment processes, these bodies can play a decisive role in advancing respectful and continuous intercultural dialogue between indigenous peoples and States that may bring about the needed changes. They can also be instrumental in preventing and solving conflict situations.

46. Even when special institutions devoted to indigenous peoples exist, lack of adequate coordination and lack of awareness and capacity among State institutions with regard to indigenous issues are common problems cited across countries in terms of enforcing legislation and other measures. The mandate holder has repeatedly recommended that States develop specialized training programmes for government officials as well as members of the legislative branch and the judiciary on the rights of indigenous peoples. Members of the police force, the military and penitentiary staff should also receive training. Indigenous peoples should be involved in designing such programmes and adequate technical and financial resources for these should be provided.

47. Another common concern is how the governmental institutions dealing with indigenous peoples are presented as being indigenous peoples' representative institutions. The mandate holder has stressed the right of indigenous peoples to maintain their own institutional structures and political systems and to participate in decision-making through their own representatives chosen by themselves through their own procedures, as set out in article 18 of the Declaration. Their full and effective participation in the public life of the State should be ensured.

48. Moreover, the collective right of self-determination may be expressed in different forms of self-governance and autonomy.[54] Very diverse good practices regarding the recognition of indigenous governing institutions can be found in different countries, depending on historical and political factors.[55] In 2009 Denmark adopted the Act on Greenland self-government. Under the preamble, the people of Greenland are recognized as a people under international law with the right to self-determination.

49. In other countries, indigenous peoples are developing their own proposals of autonomy in accordance with the Declaration, such as the Autonomous Territorial Government of the Wampis Nation in Peru. In Bolivia, the first autonomous local government took office in the province of Charagua in January 2017. In addition, new institutions have been created, such as the Sami Parliaments in the Nordic countries, the National Congress of Australia's First Peoples, and numerous

[51] Examples include Brazil, Honduras and Paraguay.

[52] For example, Mesa sobre consulta in Costa Rica; and Comisión multisectorial sobre acuerdos bloque 192 in Peru.

[53] For example, Mesa Permanente de Concertación con los Pueblos y Organizaciones Indígenas in Colombia; and Mesa Permanente sobre Derechos de los Pueblos Indígenas in El Salvador.

[54] United Nations Declaration on the Rights of Indigenous Peoples, articles 3, 4 and 5.

[55] See A/HRC/18/35/Add.4 (2011); A/HRC/21/47/Add.1 (2012); and A/HRC/27/52/Add.2 (2014) on treaty-based recognition. See also A/HRC/15/37/Add.3 (2010) and A/HRC/27/52/Add.1 (2014) for good practices in Latin America; and A/HRC/15/37/Add.6 (2010) and A/HRC/33/42/Add.3 (2016) for Nordic countries. For Africa, see A/HRC/15/37/Add.2 (2010); A/HRC/18/35/Add.5 (2011); and A/HRC/24/41/Add.1 (2013). In Asia, Malaysia recognizes certain levels of governance for natives of Sabah and Sarawak, while in India the Panchayat (Extension to the Scheduled Areas) Act, 1996, grants local decision-making power to the tribal councils.

indigenous representative organizations. Nevertheless, challenges still remain for the recognition of indigenous peoples' own institutions and organizations in many countries, including restrictive legalisation and registration processes.[56]

50. Finally, independent national human rights institutions have a critical role to play with regard to promoting and monitoring national laws and policies, their harmonization with international human rights standards, including the Declaration, and State compliance. Some independent national human rights institutions have incorporated indigenous members, or sections on indigenous issues, have developed good monitoring practices, and have promoted dialogue on the rights of indigenous peoples in their countries.[57] Countries where independent national human rights institutions have promoted the rights of indigenous peoples include Colombia, Guatemala, Peru, Australia, Indonesia, Malaysia, Nepal, New Zealand, the Philippines, Kenya, Namibia and the United Republic of Tanzania.

IX. Priority areas that require urgent attention

51. Notwithstanding the achievements mentioned above in terms of legal, policy and institutional frameworks, there are specific priority areas that present serious challenges for the fulfilment of the aims of the Declaration. This section provides a brief summary of those priority areas in which progress is more urgently needed, including references to guidance provided by the mandate holder to this effect.

A. Lands, territories and resources

52. The Declaration contains a set of collective rights that are fundamental for the survival of indigenous peoples as distinct peoples, as underlined by international, regional and national law and jurisprudence. These are their right to self-determination and the related rights over their lands, territories and natural resources, on which the enjoyment of the whole panoply of their human rights depends. The Declaration states the "urgent need" to respect and promote the inherent rights of indigenous peoples, "especially their rights to their lands, territories and resources".[58] Therefore, it is a serious concern that the most common complaints brought to the attention of the Special Rapporteur are precisely violations of indigenous peoples' collective rights to their lands, territories and resources.

53. As already mentioned, several countries have developed legal instruments and administrative and other measures to recognize indigenous rights to land and resources, including processes of land demarcation, title-clearing, dispute settlement, and others. Yet, even in those countries, implementation of legislation and policies is inadequate and indigenous peoples continue to be dispossessed of their traditional lands and resources and forcibly displaced, including by State-sponsored infrastructure, agribusiness, extractive projects and conservation

[56] See A/HRC/21/47/Add.2 (2012); A/HRC/24/41/Add.1 (2013); and A/HRC/27/52/Add.4, communication with Bolivia.

[57] See A/HRC/18/35/Add.4; A/HRC/27/52/Add.2; and A/HRC/36/46/Add.2.

[58] United Nations Declaration on the Rights of Indigenous Peoples, preamble.

measures.[59] The consequences of such violations on indigenous peoples, as observed by the mandate holder in a wide range of countries across the world, continue to result in the expropriation of land, forced evictions, and the denial of self-governance, as well as discrimination against traditional livelihoods and loss of culture and spiritual sites.

54. In several regions, large-scale land-grabbing is escalating and producing serious human rights violations and direct attacks against indigenous leaders and community members who seek to defend their land rights. Indigenous peoples are being threatened, arrested and prosecuted and, in the worst situations, they become the victims of extrajudicial executions.[60]

55. The nature of the allegations received by the mandate holder indicates an increase in violence against indigenous peoples when they defend their basic human rights, including their rights to lands and resources. Within this context, the use of anti-terrorist legislation, the terming of human rights defence as a criminal activity, and impunity when crimes against indigenous peoples are committed remain very serious concerns. In the past 10 years the mandate holder has addressed, often together with other special procedures mandate holders, many cases of violence against indigenous peoples, their leaders and representatives. This has been undertaken through the communications procedure and the release of public statements.[61] The mandate holder has also sought to address these situations by engaging the Governments in constructive dialogues and by undertaking working visits to examine the issues in more depth. The Special Rapporteur intends to develop further research on this issue but would like to emphasize that the underlying reason for the key problems seen in these cases is the lack of observance of indigenous land, natural resources and related rights recognized in the Declaration and other human rights instruments.

56. The mandate holder has provided numerous recommendations in country reports and in communications on measures and actions to be adopted to realize indigenous peoples' land and resources rights. These include the development of an adequate legal framework in accordance with international human rights standards;

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[59] See, for example, with regard to hydroelectric dams: Lao People's Democratic Republic (A/HRC/9/9/Add.1 and A/HRC/12/34/Add.1); Niger (A/HRC/9/9/Add.1); Panama (A/HRC/9/9/Add.1, A/HRC/12/34/Add.1 and A/HRC/12/34/Add.5); Ethiopia (A/HRC/12/34/Add.1, A/HRC/19/34 and Corr.1 and A/HRC/27/52/Add.4); India (A/HRC/12/34/Add.1); Costa Rica (A/HRC/27/52/Add.4); Guatemala (A/HRC/18/51 and Corr.1 and A/HRC/27/52/Add.4, communication No. GTM 4/2013); Brazil (A/HRC/12/34/Add.2 and A/HRC/33/42/Add.5); Paraguay (A/HRC/30/41/Add.1); and Honduras (A/HRC/33/42/Add.2). On the impacts of mining, hydrocarbons and similar projects: Canada (A/HRC/12/34/Add.1); India (A/HRC/12/34/Add.1); Kenya (A/HRC/27/52/Add.4, communication No. KEN 7/2013); Suriname (A/HRC/27/52/Add.4, communications Nos. OTH 4/2013 and 8/2013); Australia (A/HRC/32/53, communication No. AUS 2/2016). In relation with conservation activities, see A/71/229. On forced displacement, see A/HRC/12/34/Add.1 and A/HRC/21/47/Add.2.

[60] In 2016-2017, the mandate holder sent communications expressing concerns over allegations of such violations inter alia in Brazil, Colombia, Ecuador, Guatemala, Honduras, Paraguay, Peru, Ethiopia, Kenya, the United Republic of Tanzania, India, Indonesia, the Philippines and the United States of America, available from https://spcommreports.ohchr.org/.

[61] See A/HRC/9/9/Add.1 (Chile (see also A/HRC/19/44, communication No. CHI 1/2011) and New Zealand) on anti-terrorist laws; A/HRC/9/9/Add.1 (Colombia, Ecuador, Kenya, Malaysia (see also A/HRC/12/34/Add.1), Mexico (see also A/HRC/12/34/Add.1), Rwanda and United Republic of Tanzania); A/HRC/12/34/Add.1 (Chile, Colombia, Guatemala, India, Niger, Papua New Guinea, Philippines and Viet Nam); A/HRC/19/44 (Peru, Guatemala and Brazil); A/HRC/20/30 (Costa Rica, communication No. CRI 1/2012); A/HRC/27/52/Add.4 (Argentina, Bangladesh, Brazil, Cameroon, Canada, Chile, Colombia, Ecuador, Honduras and United Republic of Tanzania). See also A/HRC/12/34/Add.2 (2009); A/HRC/15/37/Add.3 (2010); A/HRC/21/47/Add.2 (2012); A/HRC/33/42/Add.1 (2016); and A/HRC/33/42/Add.2 (2016).

the establishment of accessible, prompt and effective procedures to process land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; ensuring effective protection from encroachment, including through early warning systems; and the prohibition of forced evictions. National and regional human rights courts have elaborated jurisprudence that provides a solid basis on the ways to realize indigenous peoples' rights to their lands and resources, including appropriate remedies when those rights have been violated. The lack of compliance with such court decisions remains a concern.

B. Access to justice and recognition of indigenous justice systems

57. Many of the obstacles indigenous peoples face in the recognition of their rights to land and resources are linked to undue delays in the existing procedures and their inability to access justice, particularly when rights of third parties are involved. Access to justice remains elusive for indigenous peoples, both because of the numerous obstacles they face to effectively access the general justice systems and for the lack of adequate recognition of their own customary laws and jurisdiction.[62]

58. An important component of the international standard of access to justice applicable to indigenous peoples is the due consideration of their customary norms and governance as well as of the potential barriers they might face due to language and cultural differences, geographical distance and their social and economic situation. Among these obstacles are insufficient resources to hire lawyers, absence of interpretation in their languages during court hearings, and the inaccessibility of courts as these are usually located in urban centres.

59. Without consideration of these potential barriers, indigenous peoples face violations of due process when they do not understand legal procedures and when courts are inaccessible. Persistent racism, including in the judicial system, is clearly an obstacle to obtaining justice.[63] This is undoubtedly a factor in the concerning overrepresentation of indigenous persons, including women and young people, in jail.[64] Aggressive litigation, particularly by private parties who seek access to indigenous lands and resources, can be used as a way to hinder effective justice or remedy.[65]

60. However, encouraging examples of access to justice have been observed by the mandate holder. These include the admission of cultural expert testimonies, the incorporation of indigenous justice operators within the national justice systems, the use of indigenous interpreters, capacity-building of judges and other justice operators, and the incorporation of Aboriginal law and relevant international standards in law schools.

61. The maintenance of indigenous peoples' own customary legal institutions and norms is an essential aspect of their right to self-determination.[66] Indigenous jurisdictional functions have been recognized at the national level in several countries.[67] Nevertheless, in spite of increasing recognition of the value of customary law and indigenous justice systems, and certain steps taken towards legal

[62] See http://unsr.vtaulicorpuz.org/site/index.php/en/statements/116-indigenous-jurisdiction.

[63] See A/HRC/18/35/Add.4; A/HRC/27/52/Add.2; and A/HRC/36/46/Add.2.

[64] See A/HRC/18/35/Add.4, paras. 62-63 and 83 (New Zealand); and A/HRC/27/52/Add.2, paras. 32-33 (Canada).

[65] See, for example, communication to Peru No. PER 1/2016.

[66] United Nations Declaration on the Rights of Indigenous Peoples, article 40; ILO Convention No. 169, article 9; A/HRC/15/37/Add.7; A/HRC/18/35/Add.6; and A/71/229.

[67] Examples include Colombia, Paraguay or Ecuador and Malaysia.

pluralism, implementation of indigenous jurisdiction is still contested. Much more needs to be done in terms of both recognition and harmonization with the national justice systems. An intercultural dialogue and understanding between State and indigenous justice authorities is vital, taking into account indigenous good practices.

C. Consultation and free, prior and informed consent

62. Consultation and free, prior and informed consent are essential safeguards that help to realize the substantive human rights of indigenous peoples. Thus, adequate implementation of the State duty to consult and obtain consent must ensure realization of those fundamental rights. There are different ways in which consultation and consent can be operationalized and this is not just limited to the adoption of specific legislation. In cases when States decide to develop laws to implement this duty, an adequate process has to be established so that indigenous peoples fully participate in the drafting and adoption of such measures. The rights to consultation and consent should not be regarded as stand-alone rights, as these are closely linked to other rights such as the right to self-determination, the right to lands, territories and resources and the right to development.

63. Over the past decade, the mandate holder has received many complaints and requests for technical support regarding the implementation of the State duty to consult and obtain the free, prior and informed consent of indigenous peoples before the adoption of legal, administrative and policy measures that affect them. Commonly, the complaints received are related to the lack of effective implementation of the rights to consultation and consent in the context of plans for natural resource development and investment projects affecting indigenous peoples' lands and resources.

64. In response, the mandate holder has provided detailed comments and recommendations to help to clarify and implement these standards in general and specific cases, including on "consultation on consultation" processes to decide on the measures that could be best suited to ensuring respect for fundamental rights in accordance with international human rights standards, particularly the Declaration. Advice has been provided through participation in meetings and seminars, communications, visits and reports, including on legal standards applicable to projects and activities that affect indigenous peoples' lands, territories and resources.[68]

X. Implementation at the United Nations level

65. As the Declaration points out, the United Nations system has an important and continuing role to play in promoting and protecting the rights of indigenous peoples.[69]

66. United Nations human rights treaty bodies have referred to the Declaration as an authoritative source on State obligations regarding indigenous peoples' rights in their assessments of compliance under the various treaties. Observations and recommendations by the human rights treaty bodies provide valuable insight on the implementation of the Declaration in specific contexts and situations.

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[68] See A/HRC/9/9/Add.1; A/HRC/12/34; A/HRC/12/34/Add.6; A/HRC/15/37; A/HRC/15/37/Add.8; A/HRC/18/35/Add.3; A/HRC/18/35/Add.8; A/HRC/21/47; A/HRC/27/52/Add.2; A/HRC/33/42/Add.2; and A/HRC/36/46/Add.1. See also http://unsr.vtaulicorpuz.org/site/index.php/en/statements/166-consultation-and-consent; and http://unsr.vtaulicorpuz.org/site/index.php/en/documents/special/172-comentarios-consulta-honduras.

[69] United Nations Declaration on the Rights of Indigenous Peoples, twentieth preambular paragraph and articles 41 and 42.

67. A positive development is that in the context of the universal periodic review the Declaration has been referred to as an instrument to measure how Governments adhere to international human rights standards.

68. Further participation and involvement of indigenous peoples in the work of these bodies and procedures would help to increase awareness of the Declaration.

69. Among the gains achieved after the Declaration came into being is the adoption of policies and guidelines on indigenous peoples by several agencies, programmes and funds and other intergovernmental bodies. In 2008, the United Nations Human Settlements Programme (UN-Habitat) adopted its "Policy guide to housing of indigenous peoples in cities". The United Nations Development Group adopted its "Guidelines on indigenous issues" in 2009, the same year as the International Fund for Agricultural Development adopted its policy of engagement with indigenous peoples. The Food and Agriculture Organization of the United Nations followed suit and adopted its policy on indigenous and tribal peoples in 2010. The United Nations Environment Programme finalized its "Policy guidelines on indigenous peoples" in 2012.

70. Multilateral environmental agreements should also consider the Declaration as the framework when adopting decisions which affect indigenous peoples. Good decisions have emerged from the sessions of the Conferences of the Parties to the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, and there are positive practices in terms of creating spaces for indigenous peoples within the bodies of these Conventions. For example, under the Convention on Biological Diversity there is a Working Group on article 8 (j) on the traditional knowledge of indigenous peoples and local communities. Since 2007, the Conference of the Parties to the Convention on Biological Diversity has noted the existence of the Declaration in decisions and has adopted guidelines relevant for indigenous peoples. The Conference of the Parties to the Convention on Climate Change, at its twenty-first session, recognized the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and established a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.[70]

71. The Special Rapporteur has engaged with the Conferences of the Parties and intersessional meetings of the Convention on Biological Diversity and the Convention on Climate Change to advocate for the recognition of the Declaration, the inclusion of safeguards and the adoption of the human rights-based approach. This is required in order to protect indigenous peoples' rights and recognize the contributions of indigenous peoples' traditional knowledge in achieving the aims of the Conventions.

72. The mandate holder has emphasized the importance of including the economic, social and cultural rights of indigenous peoples in the Sustainable Development Goals,[71] and advocated, jointly with other special procedures mandate holders and other United Nations bodies, for indigenous peoples' rights, and for the inclusion of a human rights-based approach in the 2030 Agenda for Sustainable Development.[72] While the references to indigenous peoples remain limited, it is encouraging that the 2030 Agenda and the Sustainable Development Goals set targets and indicators relevant for indigenous peoples. The long-standing appeal of

[70] Decision 1/CP.21, para. 135 (see FCCC/CP/2015/10/Add.1).

[71] See A/69/267 (2015).

[72] General Assembly resolution 70/1. See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14888&LangID=E; and www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20262&LangID=E.

indigenous peoples to Governments and the United Nations agencies to disaggregate data on indigenous peoples has not yet happened in a satisfactory manner. This remains a major challenge in the implementation and the monitoring of the Sustainable Development Goals in the context of indigenous peoples.

73. The Special Rapporteur has also engaged with members of the Board and the secretariat of the Green Climate Fund to encourage them to adopt a safeguard policy which will protect the rights of indigenous peoples in the projects they fund. As a result of this effort and the active advocacy of indigenous peoples, in June 2017 the Green Climate Fund secretariat released a draft indigenous peoples' policy which is currently the subject of consultations with indigenous peoples.

74. The adoption of such policies is a first step that United Nations bodies can take to comply with their obligations set forth in articles 41 and 42 of the Declaration. Of note is that the United Nations bodies, including the Permanent Forum on Indigenous Issues and its secretariat, have developed several capacity-building tools and training modules for the mainstreaming of the Declaration in the work of United Nations agencies, bodies, funds and other entities.

75. It has to be emphasized that United Nations agencies, programmes and funds engaged in development work need to apply the human rights-based approach seriously, and use the Declaration when designing and developing their work at the country levels. This should be done in cooperation with indigenous peoples as a demonstration of their efforts to respect the right of indigenous peoples to participate in decision-making in matters that affect them.

76. In spite of the existence of good policies and guidelines on indigenous peoples, the Special Rapporteur sees the need to raise further awareness on the Declaration within the United Nations system itself. It is particularly frustrating to see the lack of coherence within the United Nations system in terms of actions taken to protect the rights of indigenous peoples, especially at the country level.

77. In the outcome document of the World Conference on Indigenous Peoples of 2014, which the Member States adopted by consensus, the General Assembly urged the United Nations system to contribute to the full implementation of the rights enshrined in the Declaration and in no way diminish or limit them. The system-wide action plan adopted as a result of the World Conference may improve the effectiveness and coordination of the United Nations system with regard to the implementation of the Declaration.[73]

78. The International Labour Organization has a particular standing among United Nations agencies with regard to the rights of indigenous peoples, owing to its role in the promotion and implementation of ILO Convention No. 169. The Declaration and ILO Convention No. 169 are complementary international human rights instruments and constitute the minimum human rights standards needed for the dignity, well-being and survival of indigenous peoples. ILO plays an important role, including through technical advice, in the operationalization of the rights of indigenous peoples. Within this context, it is important to recall that, when interpreting human rights standards, a progressive approach is required, so that a human rights instrument can never be used to diminish subsequently recognized standards.[74]

[73] System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (see E/C.19/2016/5).

[74] ILO Convention No. 169, article 35.

XI. Universal responsibility for implementation

79. Protection and promotion of human rights, including the rights of indigenous peoples, is a universal responsibility. Since the adoption of the Guiding Principles on Business and Human Rights, there is a better understanding on how the private sector can meet this responsibility. Some policy initiatives have been adopted on the basis of the Declaration[75] although, according to allegations received by the mandate holder, business activities, particularly those related to infrastructure building and extractive industries, are still far from respecting the rights enshrined therein. The role of international financial institutions and private investors in the promotion of the Declaration within their field of work is essential in this regard.[76]

80. Development and conservation civil society organizations are also important actors. Their work should adhere to a human rights-based approach, by cooperating with indigenous peoples in achieving the ends of the Declaration and supporting their own self-determined commitments to respect the Declaration. It is positive that already in 2008, the International Union for Conservation of Nature, the key global entity for the adoption of conservation policies on protected areas, explicitly pledged its commitment to implementing the Declaration in conservation work. However, as noted by the current mandate holder in her assessment of how conservation initiatives impact indigenous peoples' rights, "considerable implementation gaps remain and new threats to human rights-based conservation are emerging".[77]

81. Academic institutions have developed quite a number of good practices, which should be supported and replicated, in terms of increasing respect and understanding of the rights of indigenous peoples. This includes supporting their rights to their own knowledge, promotion of indigenous-led research, and incorporation of indigenous rights in university curricula or scholarship programmes for indigenous students.

82. The mass media also plays a role, which it should be aware of and accountable for, in terms of perpetuating racist assumptions about indigenous peoples. Positive promotion of a better understanding of indigenous rights in mainstream media is important.

83. The donor and diplomatic community in many countries can play a significant role not only in terms of providing funds, but also in extending support for the intercultural political dialogue needed.

XII. Conclusions and recommendations

84. **The Declaration on the Rights of Indigenous Peoples is the most advanced and comprehensive international human rights instrument on the rights of indigenous peoples. It constitutes the main legal framework, together with international human rights treaties and conventions, of the work of the Special Rapporteur, whose mandate has specifically included the task of promoting its implementation since 2007.**

[75] See United Nations Global Compact, "The business reference guide to the United Nations Declaration on the Rights of Indigenous Peoples" (New York, 2013); United Nations Global Compact, "Indigenous peoples' rights and the role of free, prior and informed consent", good practice note (2014); International Petroleum Industry Environmental Conservation Association, "Indigenous peoples and the oil and gas industry: context, issues and emerging good practices" (2012); and International Council on Mining and Metals, "Indigenous peoples and mining", position statement (May 2013).

[76] See A/HRC/33/42/Add.2 (2016).

[77] See A/71/229, para. 11.

85. **The Declaration offers a historical opportunity to change the relationship of Member States with indigenous peoples from one of exclusion and marginalization into one of reconciliation, cooperation and respect. The adoption of the Declaration was, by itself, a first step by Member States, to start this new relationship and remedy past injustices and their contemporary consequences.**

86. **Ten years after its adoption, and in spite of the reaffirmation of the commitment to the Declaration made at the World Conference on Indigenous Peoples in 2014, the Special Rapporteur has to conclude that there has been limited progress in the actual implementation of the rights of indigenous peoples. This is observed in particular with regard to the core rights of indigenous peoples to self-determination and their rights to their lands, territories and resources. This conclusion is based on the work of the mandate holder since 2007.**

87. **The only way to move forward is by taking actions in good faith. This entails the holding of intercultural dialogues that are inclusive and carried out with full respect for international human rights standards. This is not to say that there has not been any progress. Many of the gains achieved so far have been outlined in the earlier sections of this report. It has to be recognized that most of these gains have been achieved because of the heightened awareness among indigenous peoples of their rights enshrined in the Declaration. They have actively organized themselves and engaged with Governments to push for the implementation of the Declaration. However, these gains do not match the expectations of indigenous peoples in terms of changes that could have taken place through an effective implementation of the Declaration.**

88. **The Special Rapporteur wishes to summarize a set of areas to which Member States should pay special attention in the development of the necessary legal, policy and other measures to implement the Declaration. The mandate holder has provided detailed recommendations on actions to be taken in all these areas, as referenced throughout the report, which could be referred to for further guidance. The Special Rapporteur hopes that the implementation of the recommendations offered by the mandate holder during the past decade can provide useful guidance to States and non-State actors.**

Recommendations

89. **Recognition of indigenous peoples as distinct peoples entitled to the collective and individual human rights enshrined in the Declaration is a precondition for its implementation.**

90. **All measures and actions should be developed in cooperation with indigenous peoples, as stated in the Declaration.**

91. **Domestic legal frameworks should be reviewed in order to ensure coherence with international human rights standards on the rights of indigenous peoples. New legislation should be developed where necessary or existing legislation amended. Any provisions which contravene the rights of indigenous peoples should be repealed.**

92. **Public policies must be put in place as part of a coordinated and systematic action of the State to empower indigenous peoples to control their own destiny, through support for their own development priorities.**

93. **The recommendation in the outcome document of the World Conference on Indigenous Peoples which urged States to develop national action plans,**

strategies and measures to achieve the ends of the Declaration should be implemented.[78] This can be done in conjunction with the policies and measures taken to achieve the Sustainable Development Goals for indigenous peoples.

94. Indigenous governance institutions and justice systems should be recognized and supported. Permanent intercultural dialogues should be established to agree on the harmonization of indigenous institutions and justice systems with the overall institutional structure of the country and with the ordinary justice system. All necessary measures have to be adopted to ensure that indigenous peoples have access without discrimination to the justice system.

95. The enjoyment of the rights of the indigenous peoples to their lands, territories and resources is central for their survival as distinct peoples. This requires that special and urgent efforts to ensure that legal, policy and other measures fully recognize, protect and enforce these rights, including redress when violations have occurred. In this regard, relevant court decisions should be complied with.

96. Consultation and free, prior and informed consent are important safeguards of the fundamental rights of indigenous peoples and essential elements for establishing a good faith and respectful relation between them and the States. States and indigenous peoples should jointly develop the measures deemed necessary to make these rights effective.

97. Urgent measures should be adopted to protect indigenous peoples' rights to life and security, particularly when they are exercising or defending their rights. Impunity for crimes committed against indigenous peoples must end.

Recommendations to the United Nations system

98. The United Nations system has a particular role to play in the implementation of the Declaration. The Special Rapporteur would like to refer to the recommendations offered by the mandate holder in thematic and country reports to this effect, and to the communications and exchanges maintained with different United Nations bodies. Some key areas of work that could be considered are:

(a) Promoting awareness at all levels of the Declaration and of the main problems indigenous peoples face for the full enjoyment of their rights;

(b) Providing technical assistance to States, when requested, which can include awareness-raising and capacity-building, to ensure implementation of the Declaration;

(c) Increasing coherence with the United Nations system itself, particularly among United Nations agencies, funds and entities related to development issues, to ensure adoption of a human rights-based approach in all its programmes, projects and activities, including implementation of the Declaration and the Sustainable Development Goals;

(d) Prioritizing support for indigenous peoples' own initiatives and providing support for their participation in decision-making in all actions developed by the system at the country level which may affect them;

(e) Promoting good faith intercultural dialogue between States and indigenous peoples on the key issues identified by indigenous peoples;

[78] General Assembly resolution 69/2, para. 32.

(f) Supporting country-level implementation of the recommendations of the Special Rapporteur and the human rights treaty bodies related to the rights of indigenous peoples;

(g) Promoting the Declaration as the minimum human rights standard on the rights of indigenous peoples to be applied within the work of United Nations bodies related to the issue of business and human rights and that of international financial institutions.